

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

COMCAST CABLE COMMUNICATIONS
CORPORATION, LLC, a Delaware
Corporation,

Plaintiff,

v.

FINISAR CORPORATION, a Delaware
Corporation,

Defendant.

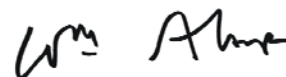
No. C 06-04206 WHA

**ORDER DENYING
PLAINTIFF'S MOTION FOR
ATTORNEY'S FEES**

Comcast started this lawsuit, seeking a declaration of non-infringement and invalidity. Finisar counterclaims. Eventually, many claims were eliminated and only one remained — claim 25. Comcast does not contend the overall suit was “exceptional,” only that final chapter leading to its victory on claim 25. Assuming that such a narrow vein of a much larger suit can be found “exceptional,” this order finds the claim 25 proceedings were not exceptional. It is true the patent owner’s arguments was thin on claim 25 but it was no so thin as to warrant a fees sanction, taking into account the larger issues that set the stage for the dénouement as well as the proceedings before the PTO and the Federal Circuit. We must also remember that the sole basis for decision on claim 25 was invalidity, not infringement, and at least in the context of this case, the patentee had the presumption of validity in its corner.

IT IS SO ORDERED.

Dated: September 10, 2008.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE